

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

HILARIO CANO,

Plaintiff,

v.

GUACA MAYA, INC., and
CLAUDIA CANO-ROBLES,

Defendants.

CASE NO.

NOTICE OF REMOVAL

Defendants Guaca Maya, Inc. (“Guaca Maya”) and Claudia Cano-Robles (“Robles,” together with Guaca Maya, “Defendants”) file this Notice of Removal, thereby removing this case from the District Court of Douglas County, Nebraska to the United States District Court for the District of Nebraska. In support of this Notice of Removal, Defendants show the following:

A. State Court Action

On or about May 2, 2023, an action was commenced in the District Court of Douglas County, Nebraska entitled *Hilario Cano v. Guaca Maya, Inc. and Claudia Cano-Robles*, Case No. D01CI230003482 (“State Court Action”). A copy of the Complaint, Summons and pleadings served by Plaintiff upon Defendants in the State Court Action are attached hereto as Exhibit A and are incorporated herein by this reference.

Plaintiff alleges ten causes of action against Defendants: (1) breach of contract (against Robles), (2) unjust enrichment (against Robles), (3) fraudulent misrepresentation (against Robles), (4) failure to pay minimum wage in violation of the “Federal Labor Standards Act” (against Guaca Maya), (5) failure to pay minimum wage in violation of Nebraska’s Wage and Hour Act (against Guaca Maya), (6) failure to pay overtime in violation of the “Federal Labor Standards Act” (against Guaca Maya), (7) failure to keep accurate and proper records in violation of federal and Nebraska

wage laws (against Guaca Maya), (8) unlawful practice in violation of the Fair Labor Standards Act (against Guaca Maya), (9) unlawful practice in violation of the “Nebraska Fair Employment Act” (against Guaca Maya), and (10) a claim for “individual liability” of Robles. (*See* Ex. A, Compl. ¶¶ 19-90).

Defendants have not filed an answer, responsive pleading or otherwise responded to Plaintiff’s Complaint. Pursuant to 28 U.S.C. § 1446(b)(2)(A), all Defendants hereby join and consent to the removal of the State Court Action to this Court.

B. Federal Question and Supplemental Jurisdiction

This action is removable to this Court pursuant to 28 U.S.C. §§ 1331 and 1441. Specifically, four of Plaintiff’s causes of action seek to recover damages arising out of alleged violations of federal law under the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*). These four causes of action may be removed, as a matter of law, because they involve a federal statute providing original jurisdiction to federal district courts. *See* 28 U.S.C. § 1441(a). As a result, this Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441.

Additionally, this Court has supplement jurisdiction pursuant to 28 U.S.C. § 1367, over Plaintiff’s remaining state law claims because these claims form part of the same case or controversy as the federal law claims because they arise out of Plaintiff’s alleged claims of Defendants’ labor and employment violations contrary to federal law (and similar Nebraska state employment/wage statutes) as well as alleged payments made by Plaintiff to and received by Defendants in connection with Defendants’ business for which Plaintiff seeks damages as an alleged employee in his Complaint.

C. Timeliness of Removal

Defendants' removal is timely. Defendant Guaca Maya received a copy of Plaintiff's Complaint and Summons on May 19, 2023. Defendant Robles received a copy of Plaintiff's Complaint and Summons after May 19, 2023 and has been otherwise made aware of the Complaint and Summons identified in Exhibit A. Defendant Robles specifically consents to and joins in this Removal. This Removal was filed within thirty (30) days of Defendants' receipt of the Summons and Complaint and is, therefore, timely pursuant to 28 U.S.C. § 1446(b).

D. State Court Documents Attached

In accordance with 28 U.S.C. §§ 1446(a), 1447(b), and 1449, a copy of all process, pleadings, and orders served upon and/or received by Defendants are attached hereto as Exhibit A and are incorporated herein by this reference.

E. Notice to State Court and Plaintiff

Pursuant to 28 U.S.C. § 1446(d), Defendants will file a copy of this Notice of Removal with the District Court of Douglas County, Nebraska and will provide written notice to the Plaintiff of the filing of this Notice of Removal.

F. Prayer

If any question arises as to the propriety of the removal of this action, Defendants request the opportunity to brief any disputed issue and to present oral argument in support of their position that this case is properly removed. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Defendants' rights to assert any defense or affirmative claim including, without limitation, defenses of lack of jurisdiction, improper joinder of claims or parties or any other procedural or substantive defenses or counterclaims available under federal, state, or local law.

WHEREFORE, Defendants give notice and pray that the matter entitled *Hilario Cano v. Guaca Maya, Inc. and Claudia Cano-Robles*, Case No. D01CI230003482 pending in the District Court of Douglas County, Nebraska be and hereby is removed to the United States District Court for the District of Nebraska, and request that this Court retain jurisdiction for all further proceedings and issue such further orders and processes as may be necessary.

Dated this 16th day of June, 2023.

GUACA MAYA, INC., and CLAUDIA
CANO-ROBLES, Defendants

By: s/ Brian T. McKernan
Brian T. McKernan, #22174
Alexander K. Shaner, #27092
McGrath North Mullin & Kratz, PC LLO
Suite 3700, First National Tower
1601 Dodge Street
Omaha, Nebraska 68102-1627
Telephone: 402-341-3070
Fax: 402-341-0216
bmckernan@mcgrathnorth.com
ashaner@mcgrathnorth.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16th day of June, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Additionally, I provided a courtesy copy of the foregoing, via email, to the following:

Carlos Anaya, #27712
Goosmann Law Firm, PLC
Suite 250
17838 Burke Street
Omaha, NE 68118
Telephone: (402) 884-2265
Email: AnayaC@GoosmannLaw.com
Attorney for Plaintiff

s/Brian T. McKernan